

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

RICHARD D. KING, LESLIE D. HARVEY, and RAMON GONZALES,	)	Case No. C-06-2602-SBA
	)	
Plaintiffs/Petitioners,	)	ORDER DISMISSING
	)	PETITION TO QUASH AND
v.	)	<u>ENFORCING SUMMONS</u>
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

This is an action filed by plaintiffs which seeks to quash an Internal Revenue Service (IRS) summons served on Business Inc. The IRS is examining Business Inc to determine whether it is preparing false income tax returns for it's clients. Steven Murdock is the President and CEO of Business Inc who the IRS believes is assisting in the preparation of false tax returns. The IRS served a Summons on Business Inc. requesting it to produce records of clients whose returns were prepared by Business Inc.

The United States has a system of taxation that relies on self-assessment and the good faith integrity of each taxpayer to disclose completely and honestly all information relevant to its tax liability. Nonetheless, "it would be naive to ignore the reality that some persons attempt to outwit the system." United States v. Bisceglia, 420 U.S. 141, 145 (1975). Pursuant to Sections 7801 and 7802 of the Internal Revenue Code of 1986 (26 U.S.C.), the Secretary of the Treasury and the Commissioner of Internal Revenue are charged with the responsibility of administering

1 and enforcing the Internal Revenue Code. To this end, Code Section 7601 directs the Secretary  
 2 to make inquiries into the tax liability of every person who may be liable to pay any internal  
 3 revenue tax. In turn, Code Section 7602 authorizes the Secretary to examine records, to issue  
 4 summonses, and to take testimony for purposes of: (1) ascertaining the correctness of any  
 5 return, (2) making a return where none has been made, (3) determining the liability of any  
 6 person for any internal revenue tax, or (4) inquiring into any offense connected with the  
 7 administration or enforcement of the internal revenue laws. **Donaldson v. United States**, 400  
 8 U.S. 517, 523-524 (1971). An IRS summons is properly issued and enforced even if the IRS is  
 9 conducting a criminal investigation. There is no civil/criminal distinction. **United States v.**  
 10 **Abrahams**, 905 F.2d 1276, 1281, n. 4 (9<sup>th</sup> Cir. 1990)

11 In order to obtain enforcement of its summons, the IRS must establish the good faith  
 12 requirements set forth in **United States v. Powell**, 379 U.S. 48 (1964), defined as follows:  
 13 (1) that the investigation will be conducted pursuant to a legitimate purpose; (2) that the inquiry  
 14 may be relevant to the purpose; (3) that the information sought is not already within the  
 15 Commissioner's possession; and (4) that the administrative steps required by the Code have been  
 16 followed--in particular, that the 'Secretary or his delegate,' after investigation, has determined the  
 17 further examination to be necessary and has notified the taxpayer in writing to that effect." *Id.*, at  
 18 57-58. Once the IRS has made such a showing, it is entitled to an enforcement order unless there  
 19 is a showing that the IRS is attempting to abuse the court's process. Such an abuse would take  
 20 place "if the summons had been issued for an improper purpose, such as to harass the taxpayer or  
 21 to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the  
 22 good faith of the particular investigation." *Id.*, at 58.

23 The Government's burden is met by a declaration from the investigating agent that the  
 24 *Powell* requirements have been met. **United States v. Garden State Nat'l Bank**, 607 F.2d 61,  
 25 68 (3d Cir. 1979); **Alphin v. United States**, 809 F.2d 236, 238 (4th Cir. 1987); **United States v.**  
 26 **Davis**, 636 F.2d at 1034; **United States v. Will**, 671 F.2d 963, 966 (6<sup>th</sup> Cir. 1982); **United States**  
 27 **v. Kis**, 658 F.2d 526, 536 (7<sup>th</sup> Cir. 1981), *cert. denied*, 455 U.S. 1018 (1982). The burden is  
 28 minimal because the statute is read broadly to ensure that the enforcement powers of the IRS are

not unduly restricted. **Liberty Financial Services v. United States**, 778 F.2d 1390, 1392 (9<sup>th</sup> F.2d. 1993); **United States v. Balanced Financial Management**, 769 F.2d 1440, 1443 (10<sup>th</sup> Cir. 1985); **see also, United States v. Abrahams**, 905 F.2d 1276, 1280 (9<sup>th</sup> Cir. 1990).

The declaration of Special Agent Douglass Doss satisfies the Government's prima facie burden that the Powell requirements have been met. First, it demonstrates that the IRS is using its summons power for a bona fide purpose, to investigate whether Steve Murdock is preparing false tax returns for clients of his company Business Inc. Next, it establishes that the information sought is relevant because it relates to that investigation. Third, it establishes that the information is not already in the Government's possession. Finally, it shows that the IRS has followed all administrative procedures.

The relevance standard of §7602 is not to be judged by relevance standards used in deciding whether to admit evidence in federal court. **United States v. Arthur Young**, 465 U.S. 805, 814 (1984). Rather, it is analogous to a grand jury subpoena. **United States v. Ryan**, 455 F.2d 728, 733 (9<sup>th</sup> Cir. 1972). The test of materiality and relevancy is essentially the same as grand jury investigations, i.e., whether the inspection sought would throw light upon the correctness of the taxpayer's returns. The IRS can obtain items of even *potential* relevance to an ongoing investigation, without reference to its admissibility since the Service can hardly be expected to know whether such data will in fact be relevant until it is procured and scrutinized. **United States v. Arthur Young**, 465 U.S. 805, 814 (1984)

For the foregoing reasons, the Petition to Quash Summons is dismissed and the Summons served on Business Inc. is enforced. Business Inc. by and through its representative shall appear on August 1, 2006 at 9:30 a.m. before IRS Special Agent Douglas Doss or any other IRS agent designated by the IRS at 185 Lennon Lane, #200, Walnut Creek, California 94598 and produce the records described in the Summons attached as Exhibit A to the Petition To Quash.

Dated: 7/18/06

  
UNITED STATE DISTRICT JUDGE